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G.S., Appellant)	
)	
and)	Docket No. 13-881
)	Issued: July 3, 2013
DEPARTMENT OF THE ARMY, ARMY)	
CORPS OF ENGINEERS, Huntington, WV,)	
Employer)	
)	

Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

On March 4, 2013 appellant filed a timely appeal of a September 5, 2012 decision of the Office of Workers' Compensation Programs denying an oral hearing. Because over 180 days elapsed between the most recent merit decision of July 11, 2011 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's case, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

The issue is whether OWCP properly denied appellant's request for an oral hearing as untimely.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on appeal on two occasions. On October 27, 2004 appellant, then a 57-year-old structural ironworker, filed a Form CA-2 alleging that on June 1, 2011 he developed carpal tunnel syndrome due to squeezing the trigger on a torch, welding leads or pounding on metal with chipping hammers, sledge hammers and vibration from jack hammers. OWCP accepted his claim for bilateral carpal tunnel syndrome on December 17, 2004. On January 19, 2006 it denied appellant's claim for a schedule award. The Branch of Hearings and Review affirmed this decision on July 18, 2006. By decision dated January 8, 2007, OWCP granted appellant a schedule award for eight percent permanent impairment of his upper extremities. Appellant requested reconsideration and by decision dated May 16, 2007, it denied modification of the January 8, 2007 decision. He appealed these decisions to the Board and in a decision dated December 10, 2007,² the Board found the case not in posture for decision and remanded for further development of the medical evidence and determination of appellant's pay rate. In a decision dated March 28, 2008, OWCP found that appellant had a total of eight percent impairment of his upper extremities and adjusted his pay rate. Appellant appealed this decision and on February 6, 2009,³ the Board affirmed the extent of the permanent impairment and remanded the case for further development of his appropriate pay rate. The facts and circumstance of the case as set forth in the Board's prior decision are adopted herein by reference.

By decision dated July 11, 2011, OWCP denied appellant's claim for compensation for the period January 10 to July 24, 2004 and his request to repurchase leave from October 4, 2003 through March 20, 2004 on the grounds that he had not submitted sufficient medical evidence of disability.

Appellant requested an oral hearing before an OWCP hearing representative on a form dated August 10, 2011. The postmark was dated August 12, 2011. By decision dated September 5, 2012, OWCP denied appellant's request for an oral hearing as untimely filed. It noted that his request for an oral hearing was not made within 30 days from the July 11, 2011 decision as the postmark was dated August 12, 2011. OWCP found that the case could equally well be considered by requesting reconsideration and submitting additional new evidence.

LEGAL PRECEDENT

Section 8124(b) of FECA,⁴ concerning a claimant's entitlement to a hearing before an OWCP representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after

² Docket No. 07-1867 (issued December 10, 2007).

³ Docket No. 08-1645 (issued February 6, 2009).

⁴ 5 U.S.C. §§ 8101-8193.

the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary.”⁵

Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.⁶ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carriers date marking and before the claimant has requested reconsideration.⁷ Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).

ANALYSIS

In the instant case, OWCP properly determined that appellant’s August 12, 2011 request for a hearing was not timely filed as it was made more than 30 days after the issuance of OWCP’s July 11, 2011 decision. It therefore, properly denied his hearing as a matter of right.

OWCP then proceeded to exercise its discretion to determine whether to grant a hearing in this case. It determined that a hearing was not necessary as the issue in the case could be resolved through the submission of additional evidence in the reconsideration process. Therefore, OWCP properly denied appellant’s request for a hearing as untimely and properly exercised its discretion in determining to deny his request for a hearing as he had other appeal options available.

CONCLUSION

The Board finds that OWCP properly determined that appellant’s request for an oral hearing was untimely and that he was not entitled to an oral hearing.

⁵ *Id.* at § 8124(b)(1).

⁶ 20 C.F.R. §§ 10.617, 10.618.

⁷ *J.J.*, Docket No. 13-21 (issued May 8, 2013).

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 3, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board